

IN THE MATTER OF : BEFORE THE
ST. JOHN PROPERTIES, INC. : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : BA Case No. 11-011C
:

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on March 27, 2012, May 8, 2012, May 10, 2012, June 28, 2012 and August 20, 2012 to hear and deliberate the amended petition of St. John Properties, Inc., Petitioner, for a conditional use for a gasoline service station in combination with a convenience store in a B-2 (Business: General) Zoning District, filed pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

Board members John Lederer, Maurice Simpkins, Henry Eagles and James Howard were present for all of the above-mentioned hearing dates. Board member James Walsh recused himself from participating in the case. Board member Lederer presided over all five hearings.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

The case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the various technical staff reports and agency comments, the Department of Planning and Zoning Technical Staff Reports dated June 20, 2011, July 28, 2011 and April 9, 2012 recommending denial of the proposed conditional use for a gasoline service station

with convenience store, the General Plan for Howard County, the General Plan of Highways, and the Petition and Plat submitted by the Petitioner were incorporated into the record by reference.

The Petitioner was represented by counsel, Andrew Robinson, Esquire. The following persons testified on behalf of the Petitioner: Brianna Darnell, Wayne Newton and Mark Keeley.

The Petitioner proffered, and the Board accepted, the following documents into evidence: **Petitioner's Exhibits**

- Exhibit #: 1. Amended Conditional Use Plan dated 3/21/12
2. Photograph of Existing convenience Store in Lisbon Shopping Center
3. Aerial Photograph of Existing and Proposed Sites
4. Photograph of High's Dairy Store – Rogers Avenue Location
5. Photograph showing type of signage to be used at proposed location
6. Lighting Specifications for proposed lighting
7. Limits of Commercial Use Plan – Lisbon Exchange
8. Photographs of the proposed site
- 9.A. Line of Site Plan – Lisbon Exchange
- 9.B. House 1&2 View Plane Section Plan - Lisbon Exchange
10. Lighting Proposal for High's dated 4/30/12
11. Truck Turning Exhibit - Lisbon Exchange
12. Howard County General Plan Policy 3.10 (page 63)
13. Photographs of High's location in Fulton
14. Site Development Plan 10-054 for Highs @ Glenwood
15. Photographs of the roadway surrounding the proposed site

16. Stopping sight Distance Exhibit - Lisbon Exchange (dated June, 2011)
17. Color version of Concept Plan for Lisbon Exchange
18. D&O for Woodbine/Brantley - BA 07-020C
19. Truck Fueling Exhibit

The Protestants Wayne and Sue Elseth, Ellen and Mark Bockelman, Chris and Nichole Jordan, Paul and Donna McGraw, Joe Morrone, Stephanie and Grafton Dietz, Michael and Bonni Bost, and Joe and Kathi Corona were represented by counsel, Andrea LeWinter, Esquire. The following persons testified in opposition to the petition: Jon Seitz, Theodore Mariani, Ellen Bockelman, Wayne Elseth, Chris Jordan, Nancy Mitchell, Stephanie Dietz, and Charles Whited.

The opponents proffered, and the Board accepted, the following documents into evidence:

Protestants' Exhibits

- Exhibit #: 1. Photographs of signs on Route 70.
2. Various Excerpts from the Howard County General Plan
3. Not clearly accepted by Board
- 4.A. ITE data for existing High's Station-Based on # of Vehicle Fueling Positions
- 4.B. ITE data for existing High's Station-Based on square footage
- 5.A. 1996 Traffic Volume Map-Ho.Co. Website
- 5.B. 2010 Traffic Volume Map-Ho.Co. Website
6. Resume of Jon Seitz, Traffic Engineer, Transportation Resource Group
7. Resume of Theodore Mariani, Architect/Engineer/Planner
8. Road map of Lisbon Area

9. Concerned Citizens of Western Howard County authorization letter dated 3/28/12 to allow Mr. Mariani to speak of their behalf
10. Aerial map of Lisbon

As a preliminary matter, on March 27, 2012, the Petitioner submitted a revised conditional use plan to the Board, shown as Petitioner's Exhibit #1. In accordance with Board Rules of Procedure 2.202 (b&c), the Board considered whether or not the amendments made to the plan were substantive in nature. The Board found that the amendments were substantive in nature and set a new public hearing for this case on May 8, 2012 and sent a request to the Department of Planning and Zoning for it to evaluate the 2012 revised plan and to provide any new conclusions and/or recommendations it may determine are warranted based upon the new information.

FINDINGS OF FACT

Based upon the evidence presented at the hearings, the Board makes the following Findings of Fact:

1. The subject property is located in the 4th Election District. It is referenced as Tax map 7, Grid 6, part of Parcel 478 and is known as 15850 Old Frederick Road.
2. The Property is 5.88 acres in size and is located on the north side of Old Frederick Road about 560 feet east of MD 94. The area of the proposed conditional use (the Site) comprises 3.25 acres in the western portion of the Property. The site is generally rectangular with about 258 frontage feet. A deteriorated paved driveway sited about 85 feet from the west property line currently provides access to the Site. The Site is improved with an old building in the southwest corner, a paved parking pad partially bordered by a wood fence to the building's east, a concrete pad further to the north and a wood fence along a portion of the frontage. These items will be removed for the proposed development. The remainder of the

Site is generally open, with some existing trees and other vegetation along the road frontage and the west and north lot lines. The highest elevation on the Site is the area to the north of the existing building. From here, the Site drops 6-8 feet in elevation to Old Frederick Road and about 186 feet to the lowest elevation in the Site's northeast corner.

3. Vicinal properties include the following: to the west, the adjoining B-2 Parcel 226 is the site of a PNC bank. To the northwest and north is Parcel 82, Lot G. This property is zoned B-2 to the northwest of the site and RC-DEO to the north of the site. The B-2 portion is the site of the Lisbon Shopping Center, which comprises a large parking lot, a grocery store on the east side and several freestanding pad sites along the west side. Near the south entrance from Old Woodbine Road is a High's convenience store with a canopy-covered motor fueling area approved in BA 96-02E. The RC-DEO zoned northern portion of the Site is improved by the shopping center's septic easement and stormwater management areas.

To the Property's east is the RC-DEO zoned Parcel 99, the three-lot Stout Property subdivision. Each lot is improved with a single-family dwelling. The dwelling closest to Old Frederick Road has a circular driveway access and the two dwellings to the north share a long driveway running close to the Property's east side lot line.

To the south, across Old Frederick Road, the RC-DEO zoned Parcel 393 is improved with a single-family detached dwelling fronting on Old Frederick Road, and the RC-DEO zoned Parcel 333, a single-family dwelling fronting on Old Woodbine Road. There are two single-family detached dwellings fronting to the north of Parcel 333 and generally to the Site's southwest.

4. Old Frederick Road in this location has two travel lanes and about 21 feet of paving within a proposed 80-foot wide right-of-way (ROW). The posted speed limit is 30 miles per

hour.

5. The Property is designated as "Rural Conservation" on the policies Map 2000-2020 of the 2000 General Plan. The 2000 General Plan Transportation Map 2000-2020 depicts Old Frederick Road as a Major Collector.

6. The Property will be served by private water and septic facilities.

7. The Petitioner proposes to develop the Site with a gasoline service station conditional use in combination with a convenience store. The site will feature a convenience store totaling 3,500 square feet in size and five (5) double-sided fuel pumps, which shall include a single diesel fuel dispenser. The fueling area would be covered by a canopy. The ingress and egress to the Site shall be achieved by a single access drive onto Old Frederick Road. Twenty-one parking spaces are proposed for the combination of uses. Eight parking spaces are to be located in front of the store and 13 spaces will be located to the north of the canopy and the store. There are also six parking spaces located to the south of the store.

The proposed uses on the Site shall operate from 5:00 a.m. to midnight, seven days per week. Staffing for the convenience store will consist of not more than eight (8) employees (on a full and part-time basis), with a maximum of three (3) employees scheduled at any given time.

The Site will feature a propane exchange located along the front of the proposed convenience store and a pressurized air dispenser along the northern perimeter of the parking lot.

DECISION

Upon consideration of the testimony and evidence presented in this case, two members of the Board vote to grant the conditional use petition, two members vote to deny it, and one

member recused himself from participation in this case. Section 2.201 of the Board's Rules of Procedure require a vote of a majority of the Board, i.e., three members, in order for the Board to take valid action. Consequently, the Board takes no action in this case and the petition for the conditional use is hereby dismissed.

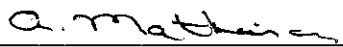
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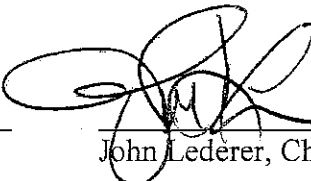
Based upon the foregoing, it is this 30th day of April, 2013, by the Howard County Board of Appeals, **ORDERED**:

That the Petition of St. John Properties, Inc., Petitioner, for a conditional use for a gasoline service station in combination with a permitted convenience store in a B-2 (Business: General) Zoning District is hereby **DISMISSED**.

ATTEST:

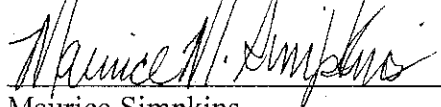
HOWARD COUNTY BOARD OF APPEALS

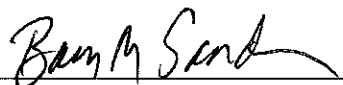

Alison Mathieson, Secretary

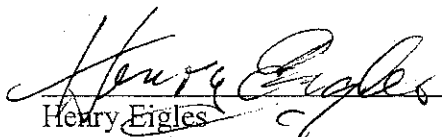

John Lederer, Chairperson


James Howard, Vice-Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR


Maurice Simpkins


Barry M. Sanders
Assistant County Solicitor


Henry Eagles

Did Not Participate
James Walsh